RT. U. S.

PETITION FOR WRIT OF CERTIORARI

IN THE SUPREME COURT OF THE UNITED STATES
NO. A-646
Spring Term, 1974

HILLCREST PRESBYTERIAN CHURCH
OF SEATTLE,

Petitioner

vs.

PRESBYTERY OF SEATTLE, INC.,

Respondent

BOARD OF NATIONAL MISSIONS OF
UNITED PRESBYTERIAN CHURCH,

Respondent

vs.

HILLCREST PRESBYTERIAN CHURCH
OF SEATTLE,

Petitioner

PETITION FOR WRIT OF CERTIORARI
TO
THE SUPREME COURT OF WASHINGTON
AND
COURT OF APPEALS OF WASHINGTON, DIV. II

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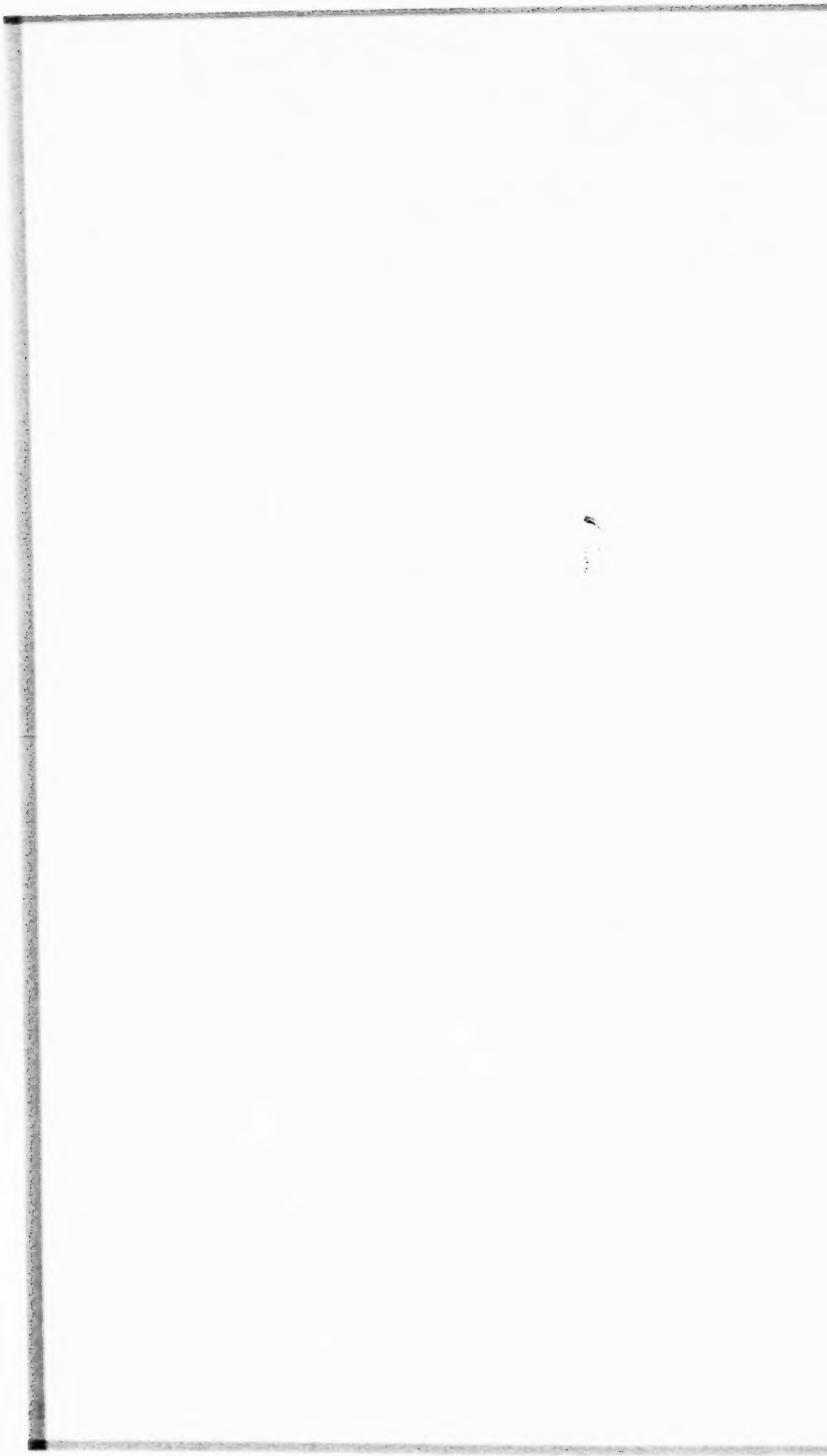

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IN THE

SUPREME COURT OF THE UNITED STATES

Spring Term 1974

No. A-646

HILLCREST PRESBYTERIAN CHURCH OF SEATTLE, a Washington corporation,

Petitioner

vs.

PRESBYTERY OF SEATTLE, INC., a Washington corporation,

Respondent

BOARD OF NATIONAL MISSIONS OF UNITED PRESBYTERIAN CHURCH,

Respondent

vs.

HILLCREST PRESBYTERIAN CHURCH OF SEATTLE, a Washington corporation,

Petitioner

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

Petitioner, Hillcrest Presbyterian Church of Seattle, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of the State of Washington and the Court of Appeals of the State of Washington, Division II, entered in this proceeding on October 9, 1973.

OPINION BELOW

By order dated October 9, 1973, the Supreme Court of the State of Washington denied the petition to review the opinion of the appellate court of the State of Washington, Division II. A copy of the order of denial appears in the appendix hereto. The opinion of the Court of Appeals of the State of Washington, Division II, is an unpublished opinion and appears in the appendix hereto. The opinion of the Court of Appeals of the State of Washington, Division II, is an unpublished opinion and appears in the appendix hereto.

JURISDICTION

The order of the Supreme Court of the State of Washington denying review was entered October 9, 1973. There are no provisions for rehearing of such an order in the State of Washington, and this petition for certiorari was filed within ninety days of that date. This court's jurisdiction is invoked under 28 USC Sec. 1257.

QUESTIONS PRESENTED

1. Is the establishment clause of the U. S. Constitution First Amendment violated when a state civil court adopts ethic methods for determining church property disputes between churches with one type of internal structure and churches with another type of internal structure?

2. Does the First Amendment to the U. S. Constitution, Article I, impose a duty upon civil courts to decide questions of law and fact in controversies over church property where such questions can

be decided without reference or interpretation of ecclesiastic doctrine or dogma, and is that duty violated when a state civil court accepts as verities purely civil determinations in such matters without a thorough case by case examination?

3. When a state civil court allows an ecclesiastical tribunal to decide purely civil questions, is such action an unlawful delegation of the responsibilities of the state civil court in violation of the establishment clause of the First Amendment to the U. S. Constitution?

4. When a state civil court recognizes the dissolution of one non-profit corporation, validly formed under the state laws of said state, by another non-profit corporation when no such action is provided or authorized in the statutes providing for non-profit corporations; and when such action is unique to one form of hierarchial structure for the ecclesiasti-

cal bodies, is such action in violation of the equal protection clause of the U. S. Constitution, Amendment Fourteen, Section 1?

5. Where a national church body helps solicit and obtain funds for building a local church on the representation that the local church is the owner of said buildings and a civil court decrees foreclosure upon said property of a gift or "grant" mortgage, and at the same time decrees implied title in trust for the national body, is that state action depriving the local church corporation of property without due process of law and equal protection under the 14th Amendment to the Constitution?

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

U. S. Constitution, Article 1.

U. S. Constitution, Amendment 14, Sec. 1.

Revised Code of Washington, 24.03.220

Revised Code of Washington, 24.03.250

STATEMENT OF CASE

Hillcrest Presbyterian Church of Seattle is a non-profit corporation formed and organized under the statutes of the State of Washington. Through contributions and occasional loans, the congregation of Hillcrest Presbyterian Church acquired property and improved said property over the years in the City of Seattle, Washington. The Presbytery of Seattle, Inc. is a Washington corporation and part of the United Presbyterian Church of the U.S.A., a religious society established to advance the Presbyterian religion.

Hillcrest Presbyterian Church, hereinafter referred to as "Hillcrest," at all times pertinent herein was in possession, exercised all the incidents of ownership, had all the indictia of legal and equitable title and claimed full ownership of certain real and personal property in the City of Seattle, Washington. Twenty-five per cent

of the building fund contributions were by non-church members, but by persons attending church or Sunday school. (R-68)

In 1967 certain differences arose between Hillcrest and Presbytery, and Hillcrest became desirous of severing all relationships with Presbytery. By unanimous consent, the members of Hilldrest took certin steps as provided in the statutes of the State of Washington regarding non-profit corporations to sever the ties with Presbytery. In response, on August 20, 1968, Presbytery purported to dissolve Hillcrest Church through the internal procedure of the Presbytery, United Presbyterian Church of the U.S.A., and demanded that Hillcrest deliver possession of all of its church properties to Presbytery. None of the procedures followed by Presbytery are provided for in the non-profit corporation laws of the State of Washington. Hillcrest commenced an action to determine the true ownership of the pro-

perty involved and by its amended complaint, prayed for an adjudication that it was the owner of all the property involved. Presbytery answered and generally denied the allegations of Hillcrest and alleged that Presbytery had supervision of Hillcrest and as such, had dissolved the Hillcrest Church. At trial on the merits, the issues presented consisted of property involved, control and management of the property, and other issues material to the ownership of the property. All of Hillcrest's evidence showed title in fee simple in Hillcrest, starting with a quit-claim deed to this property from First Presbyterian Church of Seattle.[1] Presbytery presented extensive evidence as to the alleged internal structure of the Presbyterian Church of the U.S.A. and its various subdivisions. There was absolutely no evidence presented that the ownership of the property involved had to be determined by the interpretation of a religious or ecclesiastical doctrine.

1. The Court foreclosed a "gift" mortgage in favor of Nat'l. Board of Missions, Inc., against Petitioner in a consolidated trial, although the Court, paradoxically found in the same action that the National Presbyterian Church was the owner of the buildings built by Peti-

There was extensive evidence that Presbytery always dealt with Hillcrest and Hillcrest's property at arms length, without interfering with the Hillcrest management and control of the property. There was also extensive evidence from its formation that the congregation and members of Hillcrest always believed that Hillcrest had absolute ownership of the property acquired, and were never aware or informed by Presbytery had any claim to the property and in particular, all representations[2] for fund raising by Presbytery were that Hillcrest Corporation was sole owner of this real estate. The evidence disclosed quitclaim deeds[3] to the property from the Presbytery to Hillcrest, and that all the deeds and title to the property involved showed Hillcrest, a corporation, as the owner of the property. These representations were made during fund drives to members and nonmembers alike.

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2 (R-79, R-704, R-707, R-719) See Ex. 44, R-729. See Ex. 90, R-800

REASONS FOR GRANTING WRIT

THE DECISIONS BELOW IS IN VIOLATION OF THE FIRST AMENDMENT TO THE CONSTITUTION OF THE U.S.A.

A mandate of neutrality established by the First Amendment to the U. S. Constitution requires not only that the civil courts refrain from determining and interpreting ecclesiastical doctrine, but also that civil courts jealously guard and unfailingly perform their function of determining civil matters. In effect, civil courts must not determine ecclesiastical doctrine, and must determine civil matters. When a civil court allows an ecclesiastical tribunal to decide purely civil matters, it is failing in its First Amendment mandate and summarily closes its doors to litigants in certain types of church litigation.

Presbyterian Church of U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969), the court stated:

> "The First Amendment prohibits a state from employing a religious organization as an arm of the civil judiciary to perform the function of interpreting and applying state standards." (p. 451)

The Washington Appellate Court, in reviewing this case below, summarily held that petitioner, Hillcrest Church's claim to the property was controlled by the Washington Supreme Court decision, Presbytery of Seattle, Inc. v. James R. Rohrbaugh, et al, appellants, 79 Wn.(2d) 367, without examining the differences in fact between the two cases. In Presbytery v. Rohrbaugh the court stated that the United Presbyterian Church is an association of local Presbyterian churches governed by hierarchy, which is laid out in the court opinion. By its action in summarily applying that case to the instant case, the Supreme Court of the State of Washington is holding that as a matter of law, all Presbyterian churches associated with the United Presbyterian Church have but one relationship

to the United Presbyterian Church. By so holding, the State of Washington is establishing a church body as a matter of law contrary to the First Amendment to the U. S. Constitution. By not examining the relationship of the local churches on a case by case basis, the courts of the State of Washington have summarily closed their doors to many churches in the position of petitioner. See Gonzales v. Archbishop of Manila, 280 U.S. 1.

BY ALLOWING PRESBYTERY OF SEATTLE TO SUMMARILY DISSOLVE HILLCREST PRESBYTERIAN CHURCH CONTRARY TO THE LAWS OF THE STATE OF WASHINGTON, THE COURTS ARE ALLOWING ECCLESIASTICAL TRIBUNALS TO APPLY STATE STANDARDS AND STATE LAWS CONTRARY TO THE MANDATES OF THE FIRST AMENDMENT.

The statutes of the State of Washington pertaining to non-profit organizations, provide for the dissolution of such corporations by either of two methods; (1) upon action of the internal structure of the corporation, R.C.W. 24.03.220 (set out in Appen-

dix hereto), and (2) quo warranto by the Attorney General, R.C.W. 24.03.250, (set out in Appendix hereto). The tacit recognition by the courts of the State of Washington of the alleged "dissolution" of Hillcrest Presbyterian Church by the Presbytery of Seattle is in complete contravention of the guide lines and mandates of the First Amendment, as set forth in Presbyterian Church v. Hull Church, 393 U.S. 440. This action is arbitrary and capricious, and accomplished by misrepresentation, making it subject to review as per the exceptions in Gonzales v. Archbishop of Manila, 280 U.S. 1.

THE DECISION BELOW SIGNIFICANTLY AFFECTS THE PROPERTY RIGHTS OF HUNDREDS OF SIMILARLY SITUATED CHURCHES, NOT ONLY IN THE STATE OF WASHINGTON, BUT THROUGHOUT THE NATION AND UNCONSTITUTIONALLY DEPRIVES THEM OF MILLIONS OF DOLLARS IN CHURCH PROPERTY

Hillcrest Presbyterian Church is not uniquely situated in its attempts to protect its property. There are many other Presbyterian churches within the State of Washing-

ton and many hundreds of others with the United States whose property rights are affected by the decision below. Close to 300 churches in the southern part of this country have separated from the United Presbyterian Church, U.S.A., and are in the process of taking their property with them; and suits are pending for property disputes in a number of these congregations. The determination of a hierarchial structure as a matter of law without examining case by case legal relationships of church entities, the overall church structure, deprives these church entities of the legal examination of their property rights.

> "The establishment clause forbids subtle departures from neutrality, 'religious gerrymanders', as well as obvious abuses."
>
> Waley v. Tax Commission, 397 U.S. 696

By failing to examine fully the nature of the controversy and claims involved, the courts of the State of Washington have closed its

doors to a particular segment or type of religious entities, and are guilty of "religious gerrymandering" and have deprived petitioner and all other entities similarly situated of constitutional rights, property and freedom of religion under the First Amendment of the U. S. Constitution, and of the equal protection clause of the 14th Amendment. See Gonzales v. Archbishop of Manila, 280 U.S. 1, 50 S. Ct. 5, 74 L. Ed. 131, where this court held that religious judicatories need not be followed where there was evidence of fraud, collusion or arbitrariness. In view of the misrepresentations of where title was to be lodged during fund raising and the arbitrary dissolution of the Hillcrest Corporation, the Gonzales case is controlling.

The State court ignored misrepresentation as to congregation ownership of buildings made by the National Church officials when helping local church raise funds. The

court refused to invoke "equitable estoppel" against the National Church through Presbytery, although the evidence required it. The court foreclosed a "gift" or grant mortgage against the local church, notwithstanding the same decree held the National Church was the owner of the property through an "Implied Trust." The foreclosing mortgagee, National Board of Missions, Inc., was a wholly owned subsidiary of the National Church. In spite of the fact the National Church benefited by $1,414,000.00 spent by Hillcrest on Presbyterian activities for which Hillcrest claimed payment of the mortgage,[4] the foreclosure was granted.

The misrepresentation of the local church ownership in fund drives that paid for the local church buildings, and the dissolution of the Hillcrest Religious Corporation, supported and upheld by the court's decree, is state action, violating due process and equal protection under the 14th

[4] (R-800)

Amendment to the U. S. Constitution. The case at bar comes within the exceptions for court review listed in Gonzales, supra.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review this judgment and opinion of the Court of Appeals of Washington, Div. II, and Supreme Court of the State of Washington.

Respectfully Submitted,

MALCOLM S. McLEOD
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Seattle, Washington
98104

CERTIFICATE

I certify that the foregoing petition is presented in good faith and not for delay.

MALCOLM S. McLEOD
Counsel for Petitioner

APPENDIX "A"

Revised Code of Washington, 24.03.220

VOLUNTARY DISSOLUTION. A corporation may dissolve and wind up its affairs in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Writted or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation

shall cease to conduct its affairs except insofar as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this chapter.

Revised Code of Washington 24.03.250

INVOLUNTARY DISSOLUTION. A corporation may be dissolved by a decree of the superior court in an action filed by the attorney general when it is established that:

(1) The corporation has failed to file its annual report within the time required by this chapter; or

(2) The corporation procured its articles of incorporation through fraud; or

(3) The corporation has continued to exceed or abuse the authority conferred upon it by law; or

(4) The corporation has failed for ninety days to appoint and maintain a registered agent in this state; or

(5) The corporation has failed for ninety days after change of its registered agent to file in the office of the secretary of state a statement of such change.

APPENDIX "B"

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

HILLCREST PRESBYTERIAN CHURCH OF SEATTLE, WASHINGTON, a Washington corporation,

Appellant,

v.

PRESBYTERY OF SEATTLE, INC., a Washington corporation, et al,

Respondent.

BOARD OF NATIONAL MISSIONS OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, a corporation,

Respondent,

v.

HILLCREST PRESBYTERIAN CHURCH, a corporation, a/k/a HILLCREST PRESBYTERIAN CHURCH OF SEATTLE, WASHINGTON, a Washington corporation,

Appellant.

No. 696-II

Division Two

UNPUBLISHED OPINION

Filed July 17 1973

PER CURIAM - Hillcrest Presbyterian Church appeals from judgments entered against it in two separate actions--a dispute as to ownership of the church property in which Hillcrest sought to quiet title against Presbytery of Seattle, Inc., and an action by the Board of National Missions of the church to foreclose the mortgage on the church property. These two matters were consolidated on appeal.

The facts, as found by the trial court, based upon substantial evidence, bring both cases squarely within the rationale and rules announced by the Supreme Court in Presbytery of Seattle v. Rohrbaugh, 79 Wn. 2d 367, 485 P.2d 615 (1971).

Accordingly, judgment is affirmed.

Pursuant to RCW 2.06.040 as amended by the Laws of 1971, ch. 41, S 1, this opinion will not be published.

APPENDIX "B"

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

HILLCREST PRESBYTERIAN CHURCH OF SEATTLE, WASHINGTON, Petitioner, vs. PRESBYTERY OF SEATTLE, INC., et al., Respondents.	No. 42937 Department (696-II) ORDER DENYING PETITION FOR REVIEW

The Court having considered the petition for review of the decision of the Court of Appeals in this cause,

It is ordered that the petition be and it is hereby denied.

Dated this 9th day of October, 1973.

FILED
SUPREME COURT
OLYMPIA, WASHINGTON
'73 Oct 9 P M 1:56
WILLIAM M. LOWRY
By hr Clerk Deputy

FRANK HALE
Chief Justice

9 Wn. App. 1010